
Remarks

Claims 21-44 are presented for the Examiner's consideration.

Claim 21 has been amended to recite that the first layer is a nonwoven layer. Support for this amendment is found on page 9 of the present specification. Claims 23 and 26 have been amended to place these claims in independent form. All of the limitations of claim 21 have been included in claims 23 and 26. Hence, the new limitations added to claims 23 and 26 do not introduce new matter. The other amendments made to the claims are editorial in nature. Therefore, the amendments to the claims do not introduce any new matter.

As the Examiner indicated in the Office Action dated May 20, 2003, claims 23 and 26 contained allowable subject matter. Therefore, independent claims 23 and 26, as well as dependant claims 27, 28, 34, 35 and 37 are now in condition for allowance, in view of the foregoing amendments.

Claims 21, 22, 24, 25, 31-33, 36 and 38-44 were rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Chappell et al. (USSIR H1511) in view of Dodge et al, U.S. Patent 5,879,343. Applicant's respectfully traverse this rejection.

The present invention, as claimed in independent claim 21, is directed to a personal care product having a topsheet, an absorbent core and a surge layer. To break the independent claim into its individual elements, this claim requires a surge layer positioned between a top sheet and an absorbent core of a personal care product, wherein the surge layer comprises:

1. a first layer which is a compression resistant creased nonwoven layer, and
2. a second layer having a density between 0.01 and 0.05 g/cc;

wherein the second layer is adjacent to the first layer and the first and second layers are bonded together.

As is emphasized above, the first layer of the surge layer must be a compression resistant creased nonwoven layer. In contrast, the secondary topsheet of Chappell et al. is not described as being compression resistant. Chappell et al. describes the secondary top sheet in detail in column 8, lines 19-37. Preferably, the secondary topsheet is a tissue material. Tissue materials are not known in the art to be compression resistant. Therefore, there are at least three differences between the Applicants' claimed personal care product and the product of Chappell et al.

First, the first layer of the claimed surge layer of the claimed personal care product is compression resistant. Second, the first layer of the surge layer is a nonwoven material. Further, as recognized by the Examiner, the density of the second layer is not taught by Chappell et al.

The Examiner relies upon Dodge et al. to remedy the density deficiency of Chappell et al, but the Examiner never addresses how the compression resistant limitation is met by Chappell et al. or Dodge et al. The Examiner states that if the first layer of Chappell et al. is creased, it is inherently compression resistant. As is stated above, tissue type materials are not known to be compression resistant. Now the claims have been further amended to further claim that the first layer is a nonwoven material. Therefore, even if Dodge et al. suggest using filling fibers having a density of the Applicant's claimed second layer of the surge, Dodge et al. does not remedy the deficiency of Chappell et al. with respect to the compression resistance of the first layer and/or the claim limitation that the first layer is a nonwoven material.

With respect to claim 36, the Examiner admits that Chappell et al. and Dodge et al. do not teach all of the limitations of this claim. However, the Examiner finds that the crease depth and crease frequency are an obvious choice to those skilled in the art to optimize the depth and frequency of the pleats. Applicants disagree. The Examiner has not supported her statement regarding the pleats and frequency of the pleats causing an effective variable in liquid handling ability. Flow regulation as discussed by Chappell et al. is accomplished by the capillary channel fibers, not the pleated secondary topsheet. There is no direction provided by Chappell et al. for producing the pleats. No information is provided with respect to the depths of the pleats or the frequency of the pleats. Chappell et al. does not even hint at the importance of these features. One skill in the art would only be motivated to select the claimed depth and frequency after having benefit of reviewing the Applicants specification.

In order for a combination of references to render a claim obvious, the claimed invention "as a whole", including all of the limitations of the claim, must be taught or suggested by the combination of references. Given that the combination of Chappell et al. and Dodge et al. does not teach the claim limitation that the first layer of the surge is compression resistant and/or that the first layer is a nonwoven material, not all of the limitations of the present claims are taught or suggested. Therefore, the combination of Chappell et al. with Dodge et al. fails to establish a prima facie case of obviousness. Hence, claims 21, 22, 24, 25, 31-33, 36 and 38-44 are allowable over the combined teachings of Chappell et al. and Dodge et al.

Finally, under this rejection, the Examiner mentions product by process claims. The only claim which may contain product by process limitations is claim 37, which the Examiner has indicated to be allowable. It is therefore unclear why the Examiner has raised the product-by-process issue in this rejection.

Claim 29 was rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Chappell et al. (USSIR H1511) in view of Dodge et al, U.S. Patent 5,879,343 further in view of Proxmire et al. U.S. Pat. No. 5,192,606.

The Examiner relies upon Proxmire et al. to teach that it is known in the art to aperture surge layers. While this may be true, Proxmire et al. fails to remedy the noted differences of Chappell et al. and Dodge, i.e. that the surge layer is a compression resistant nonwoven web. Therefore claim 29, as a dependent claim of claim 21, is allowable for the same reason that claim 21 is allowable.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance over the prior art relied upon by the Examiner in the Final Rejection.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 770-587-7204.

Respectfully submitted,

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CERTIFICATE OF MAILING

I, Ralph H. Dean, Jr., hereby certify that on August 6, 2003 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231.

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